

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

HENRY YU, #1380986,

Petitioner,

v.

CIVIL ACTION NO. 2:24cv425

**CHADWICK DOTSON, Director,
Virginia Department of Corrections,**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254 submitted by pro se Petitioner Henry Yu ("Yu" or "Petitioner"). Yu alleges actual innocence and ineffective assistance of counsel in his 2015 convictions in the Loudoun County Circuit Court for manufacturing explosives, felon in possession of a firearm and possession of a firearm while in possession of a controlled substance. As a result of the convictions, Yu was sentenced to serve 36 years in prison, with 13 years suspended, leaving an actual total time to serve of 23 years.

The matter was referred to a United States Magistrate Judge for Report and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed January 27, 2025 recommends the court grant Respondent's Motion to

Dismiss and dismiss Yu's petition with prejudice for being time-barred, as he has not presented sufficient evidence for a claim of equitable tolling or actual innocence to allow the court to consider his late filing. The Report and Recommendation advised each party of their right to object and the time limit for doing so. The court has received no objections, and the time for filing objections has now expired.

Accordingly, the court does hereby accept and adopt the findings and recommendations set forth in the Report and Recommendation filed January 27, 2025, and it is therefore ORDERED that Yu's Motion for Summary Judgment (ECF No. 9) is DENIED, Respondent's Motion to Dismiss (ECF No. 5) is GRANTED, and that Yu's petition (ECF No. 1) is DENIED and DISMISSED WITH PREJUDICE.¹

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); see Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); Miller-El v. Cockrell, 537 U.S. 322, 335-38 (2003); Slack v.

¹ During the briefing, Yu also filed a document styled Motion for Summary Judgment in which he re-asserted certain statutory arguments underlying his claims of actual innocence. (ECF No. 9). This motion failed to address the time bar and asserted no new arguments bearing on the Magistrate Judge's recommendation for dismissal under the statute of limitations. In light of that disposition, Yu's Motion for Summary Judgment is TERMINATED AS MOOT.

McDaniel, 529 U.S. 473, 483-85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is directed to mail a copy of this Final Order to Petitioner and to provide an electronic copy of the Final Order to counsel of record for Respondent.

/s/ 

MARK S. DAVIS,
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
February 28, 2025